

REMARKS

This responds to the Office Action mailed on December 28, 2005.

Claims 1, 4, 7, 9, 13, 41 and 47 are amended, claims 2, 23 and 28 were previously canceled, claims 45, 46 and 49-52 are canceled herein, no claims are added; as a result, claims 1, 3-22, 24-27 and 29-44, 47, 48 and 53-55 are now pending in this application.

Applicants note that there is an apparent typographical error in the listing of the pending claims on the Office Action summary page. Claims 1, 3-22, 24-27 and 29-55 are pending. The summary page lists only claims 1, 3-22, 24 and 29-55 as pending, although the detailed action section of the Office Action properly discusses claims 25-27 as well.

Claims 45, 46 and 49-52 have been canceled solely to advance the prosecution of the present application, and without prejudice to its further prosecution in an appropriately filed continuing or divisional application.

The amendments to the claims have been to clarify the claims and are not intended to limit the scope of equivalents to which any claim element may be entitled. The amendments to the claims and new claims have support throughout the specification (See, for example, paragraphs 12, 16 and 17 of the specification and original claims 2 and 28). No new matter has been added as a result. Applicant respectfully requests reconsideration of the above-identified application in view of the amendments above and the remarks that follow.

§103 Rejection of the Claims

Claims 1, 3-22, 24-27 and 29-55 were rejected under 35 USC § 103(a) as being unpatentable over Elander et al. (U.S. 4,500,750). Applicant notes that claims 45-46 and 49-52 have been canceled, thus rendering this rejection moot as to these claims.

The Office Action states that the reference teaches various elements of the claims and that it would be obvious to adapt Elander to obtain the instant invention. The Applicant respectfully traverses these assertions.

Applicant respectfully submits that the Office Action has not established the *prima facie* obviousness of the present claims. To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references

themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. MPEP 2142 (citing In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir. 1991)).

Furthermore, claims 3-6, 8-12, 14-26, 29-40, 42-44, 47, 48 and 53-55 are dependent claims. The additional limitations provided in dependent claims cannot by themselves be rendered obvious over the cited references if the independent claim from which it depends is determined to be nonobvious.

Elander does not teach or suggest the claimed invention. Elander discusses a cryptographic application for interbank verification which utilizes a fixed verification system of encryption and decryption.

In contrast, claims 1, 7 and 13, as amended, recite, in part, "a user or relying party selecting at least one authentication mechanism . . . to input from [a] set (claims 1 and 13)) or selection (claim 7) of authentication mechanisms . . . wherein a flexible authentication process is provided. Also in contrast, claim 27 recites a method of providing an authentication service, comprising with an authentication server, providing a list of supported authentication methods to authenticate at least one user; receiving requirements for an authentication level from at least one relying party, the at least one relying party reliant on the authentication service to authenticate the at least one user before user access is provided to its service, program or information; receiving a selection of authentication methods from the at least one user, wherein the selection can include a subset of the list of supported authentication methods; receiving identification information for the at least one user; producing a portfolio associated with the at least one user, the portfolio comprising the list of authentication methods, each authentication method in the portfolio meeting the selection of the at least one user, each authentication method in the portfolio supported by an authentication system, the list of authentication methods meeting the requirements for the authentication level from the at least one relying party; and relating the identification information to the portfolio for the at least one user. Also in contrast, claim 41

recites, in part, selecting, by the user or the relying party, at least one type of authentication information wherein a flexible authentication process is provided.

First, there is simply no teaching or suggestion in Elander *as to the desirability* of providing a flexible authentication process wherein the user or relying party selects at least one authentication mechanism to input from a set or selection of authentication mechanisms as recited in claims 1, 7, 13 and 41 as the Office Action suggests. Nor is there any teaching or suggestion in Elander *as to the desirability* of providing the elements of claim 27 as the Office Action suggests.

Second, there is no reasonable expectation of success. It is also not clear that such modification would be successful, but the mere fact that the prior art may be modified in the manner suggested by the Office Action does not make the modification obvious unless the prior art suggested the desirability of the modification. Applicant requests the Office Action to either provide evidence of such motivation or withdraw this rejection.

Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Since all of the elements of the claims are not found in Elander, including the user or relying party making the selection as recited in claims 1, 7, 13 and 41 or producing a portfolio associated with the at least one user, as recited in claim 27, Applicant respectfully traverses the single reference rejection and assumes the Examiner is taking Official Notice of the missing elements from an undisclosed source. Applicant respectfully objects to the taking of Official Notice for all the reasons stated herein, and pursuant to MPEP 2144.03, requests that the Examiner cite a reference that teaches the missing element. If the Examiner cannot cite a reference that teaches the missing element, Applicant respectfully requests that the Examiner provide an affidavit that describes how the missing element is present in the prior art. If the Examiner cannot cite a reference or provide an affidavit, Applicant requests withdrawal of the rejection and reconsideration and allowance of the claims.

Claim 1

The Office Action states that Elander discloses all of the elements of claim 1 and that Elander discloses in col. 6, lines 20-65, different authentication mechanisms. The Applicant respectfully traverses these assertions.

The activity described in col. 6, lines 20-65 of Elander pertains to the activity of the authentication server. Additionally, Elander does not teach or suggest a user or relying party selecting at least one authentication mechanism to input from [a] set of authentication mechanisms according to the level of authentication associated with the type of transaction, wherein a flexible authentication process is provided, as recited in claim 1, as amended.

Claims 3-6

The Office Action states that Elander further discloses the elements of claims 3-6 and that Elander discloses in col. 6, lines 20-65, different authentication mechanisms. The Applicant respectfully traverses these assertions for all the reasons stated above. Additionally, claims 3-6 depend on independent claim 1 which is allowable for all the reasons stated herein.

Claims 7-22, 24-27 and 29-55

The Office Action states that these claims are rejected based on the same criteria as above. Applicant again traverses this statement for all the reasons stated above. Additionally, claims 44, 47 and 48 depend on independent claim 1, claims 8-12 depend on independent claim 7, claims 14-26 depend on independent claim 13, claims 29-40 and 53-55 depend on independent claim 27 and claims 42 and 43 depend on independent claim 41, all of which are allowable for all the reasons stated herein.

Essentially, the current invention has been used as a roadmap to identify the purpose leading one to make the combination. Based on the foregoing, it is clear that the specific arrangements of the steps would not have been obvious or a matter of routine optimization.

There is further no indication of any appreciation of the problem being solved by Applicant's invention which includes providing a flexible authentication process which includes a selection being made from among a set or selection of authentication mechanisms or authentication information by a user or relying party as recited in the claims. There is no indication in Elander of any appreciation of the problem being solved by Applicant's invention. When a person, having the references before him and not cognizant of Applicant's disclosure, would not be informed that a problem (solved by Applicant's claimed invention) ever existed,

such references (which never recognized the problem) *could not have suggested its solution*. In re Shaffer, 229 F.2d 476, 108 USPQ 326, 329 (CCPA 1956). Focusing on the obviousness of substitutions and differences instead of on the invention as a whole is a legally improper way to simplify the difficult determination of obviousness. Hybritech Inc. v. Monoclonal Antibodies, Inc., 802 F.2d 1367, 231 USPQ 81, 93 (Fed. Cir.1986).

Applicant respectfully submits that independent claims 1, 5, 13, 27 and 41 and the claims which depend from them, are patentably distinct from the cited reference, either alone or in combination. Claims 1, 3-22, 24-27 and 29-40, 42-44, 47, 48, and 53-55, as amended, each viewed as a whole, are not suggested by the cited references and not obvious under 35 USC 103(a). Reconsideration and withdrawal of this rejection is respectfully requested.

Documents Cited But Not Relied Upon For This Office Action

Applicant need not respond to the assertion of pertinence stated for the references cited but not relied upon by the Office Action, because these references are not made part of the rejections in this Office Action. Applicant is expressly not admitting to this assertion and reserves the right to address the assertion should it form part of future rejections.

Conclusion

Applicants respectfully submit that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicants' attorney, Barbara J. Clark at 515-233-3865 or the undersigned attorney at 612-349-9592 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: MS Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 28th day of March 2006.

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Signature